

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION

_____	)	
THERESA FORTENBERRY and	)	
TRALVIS FORTENBERRY d/b/a	)	
CARING HANDS PERSONAL CARE HOME	)	
	)	
PLAINTIFFS	)	
	)	Civil Action No. 1:16-cv-320 LG-RHW
VS.	)	
	)	
CITY OF WIGGINS, MISSISSIPPI	)	
	)	
DEFENDANT	)	
_____	)	

**PLAINTIFFS' MEMORANDUM OF AUTHORITY IN SUPPORT OF  
THEIR MOTION TO STRIKE**

COME NOW Plaintiffs, Theresa D. Fortenberry and Tralvis Fortenberry d/b/a Caring Hands Personal Care Home by and through their attorneys of record, Rushing & Guice, P.L.L.C, and file this their Memorandum of Authority in Support of their Motion to Strike Defendant's Rebuttal in Support of its Motion for Summary Judgment in the above styled cause and state as follows:

On October 20, 2017, Defendant filed its Motion for Summary Judgment (Dk#91) and accompanying Memorandum Brief (Dk#92). The Memorandum Brief is twenty-eight (28) pages long not including the certificate of service page. In rebuttal to Plaintiffs' Response in Opposition to Defendant's Motion for Summary Judgment (Dk#100), Defendant filed its Rebuttal in Support of Defendant's Motion for Summary Judgment (Dk#104) on November 20, 2017. This filing is twelve (12) pages long not including the certificate of service page.

Pursuant to Local Rule 7(b)(5), a "[m]ovant's original and rebuttal memorandum briefs together may not exceed a total of thirty-five pages." Not counting the certificate of service pages,

Defendant's original and rebuttal memoranda together equal forty (40) pages. Defendant's original and rebuttal briefs clearly exceed thirty-five (35) pages. Defendant has not sought leave of the Court to exceed the page limits set by L.U.Civ.R. 7(b)(5).

Enforcement of the local rules by striking non-complying filings is a matter within the Court's discretion. *See United States v. Rios-Espinoza*, 591 F.3d 758, 760 (5th Cir. 2009). Additionally, "[a]ttorneys practicing before the district courts of Mississippi are charged with the responsibility of knowing the Local Rules . . . and may be sanctioned for failing to comply with them." *See* Preamble to the Local Civil Rules; *See also Kelly v. Dedicated Logistics, LLC*, 4:16-cv-215-DMB-JV, n. 1, United States District Court, N.D. Mississippi, September 5, 2017 (the Court cautioning counsel that future filings which fail to comply with the local rules will risk not being considered by the Court).

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully move this Court to strike Defendant's Rebuttal in Support of its Motion for Summary Judgment, as exceeding the page limitations set by L.U.Civ.R. 7(b)(5).

Respectfully submitted this 22<sup>nd</sup> day of November, 2017.

RUSHING & GUICE, P.L.L.C.

Attorneys for Plaintiffs

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**CERTIFICATE OF SERVICE**

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

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Further, I hereby certify that I have mailed by United States Postal Service the document to the following non-ECF participants:

None

This the 22<sup>nd</sup> day of November, 2017.

/s/ Maria Martinez  
MARIA MARTINEZ